

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12539 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

PAVANKUMAR MUNNALAL JAIN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12539 of 2004
MR HR PRAJAPATI for Petitioner No. 1
MR HM PRACHHAK, AGP for Respondent No. 1-3
MR JITENDRA MALKAN, SR.CGSC for Respondent No. 4
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CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 16/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. HR Prajapti for the petitioner detenu and ld. AGP Mr. HM Prachhak for the

State of Gujarat. Say of ld. Senior Central Govt. Standing Counsel Mr. Malkan for the Union of India is also considered. Reply affidavits filed on behalf of the detaining authority as well as State of Gujarat, tendered today by ld. AGP Mr. Prachhak are taken on record. Counter Affidavit filed on behalf of Union of India and tendered today by ld. Sr. Central Government Standing Counsel Mr. Malkan is also taken on record.

2. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention No. SB/TAPASANI/ PD/ ATK/ SR.No.8/2004 dated 10.09.2004 passed by the District Magistrate, Ahmedabad in exercise of the powers conferred on him by Section 3(2) of The Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as the "PBM Act") against the petitioner-detenu.

3. The say of the detenu is that the order of detention under challenge is illegal, invalid, arbitrary and suffers from the infirmities that are stated in para-4 of the memo of the petition. However, ld. counsel Mr. Prajapati for the detenu has concentrated his arguments mainly on two points. The first point pressed into service by ld. counsel Mr. Prajapati is that the delay caused in forwarding representation to the competent authority for appropriate decision by the detaining authority is not satisfactorily explained and the delay of two days should be treated as fatal and on this sole ground, the order of detention can be quashed and set aside. The second point pressed into service by ld. counsel Mr. Prajapati is that the authority has wrongly assumed the jurisdiction because even as per the report of FSL, it was not possible for the authority to reach to a conclusion that material found from and seized during the raid, does not fall in the category of "solvent" as defined by The Solvent, Raffinate and Stop (Acquisition, Sale, Storage and Prevention of Use in Automobiles) Amendment Order, 2001 and has pointed out the amended definition of "solvent" in the original Order of 2000 issued by the Central Government on 05.06.2000.

4. So far as first point pressed into service is concerned, it is specifically contended that the wife of the detenu has made a representation on 17.09.2004 to recall the order of detention and the said representation has reached the detaining authority on 20.09.2004. On the day on which the representation was received, the authority has become functus officio and, therefore, the authority was under obligation to forward the

representation at the earliest and there was no need to keep the same in the docket. It is submitted that 20.09.2004 is Monday i.e. working day and representation could have been forwarded immediately on that day to the appropriate authority, but nothing was done on that very day nor on 21st and 22nd Sept.2004. It was forwarded to the concerned authority having jurisdiction to pass appropriate orders on 23.09.2004. According to Mr. Prajapati, as per the settled legal position, the detaining authority was under obligation to explain the delay caused in forwarding the representation to the competent authority. He had taken this Court through the affidavit of the detaining authority and relevant para i.e. para-10 dealing with the same, is reproduced herein for the sake of convenience:-

"10. With respect to the contents of Paras

4(g), 4(h), 4(i), I say and submit that I deny the allegations, averments and contentions made therein. I say and submit that the representation dated 17.09.2004 made by the wife on behalf of the petitioner detenu received in my office on 20.9.2004 and vide communication at 23.9.2004 it was communicated to the wife of the petitioner detenu that since the order of detention has already been approved by the State Government vide order dated 20.9.2004, it has been forwarded to the State as well as the competent authority of the Central Government for the further consideration. Hence it is not correct to say that the representation of the wife of the petitioner-detenu was not considered."

5. The above para does not bear any satisfactory explanation for the delay caused in forwarding the representation. It is rightly submitted that the ratio of the decision of this Court in the case of Mineshkumar Hiralal Parmar v/s State of Gujarat, 2002(3) GLJ (U.J.) 2 would squarely apply to the facts of the present case (Spl.C.A. No. 5015/2002 Decided On 11.07.2002.) By placing reliance on the earlier decision of this Court and especially in Special Civil Application No. 9664/2000 Decided On 16.03.2002 (Mulshankar Kalyanbhai Jani v/s State of Gujarat), it has been held that "unexplained delay caused in deciding the representation even of 2 days, is fatal." This Court has expressed anxiety to the extent that delay of 2 days caused by the authority who was under obligation to apply mind and pass orders, must be promptly and delay of 2 days in taking decision is fatal. In the present case, the authority who was not supposed to do anything except forwarding the

representation to the competent authority, has consumed more than 2 days' time in forwarding the representation and this delay has remained unexplained in view of above para-10 of the reply affidavit. So, on this sole ground, the impugned order of detention requires to be quashed. In that view of the matter, it is not necessary to go into the merits of the second point pressed into service by ld. counsel Mr. Prajapati for the detenu.

6. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 10.09.2004 passed by the District Magistrate, Ahmedabad is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

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